82-1224

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

KATV — CHANNEL 7,
Petitioner,
v.
ELOISE THOMAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. The opinion of the Court of Appeals improperly held that the ninety day period in which to file an action in Federal Court pursuant to Title VII of the 1964 Civil Rights Act does not begin to run from the time the charging party's attorney received the notice of right to sue unless it can be shown that the charging party specifically directed the EEOC to send the right to sue letter to the charging party's attorney.

2. The opinion of the Court of Appeals improperly held that receipt by an attorney's employee of a charging party's right to sue letter did not trigger the running of the statutory ninety day filing period pursuant to Title VII of the 1964 Civil Rights Act.

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OPINIONS DELIVERED BELOW

The District Court's opinion granting the Petitioner's Motion to Dismiss the Title VII portions of the Respondent's complaint was entered on January 26, 1982. A copy of that unreported Order is attached to this brief in the Appendix. The United States Court of Appeals for the Eighth Circuit reversed the dismissal of the Title VII portions of the Respondent's complaint on November 12, 1982. A copy of that decision is attached to this brief in Appendix A. The United States Court of Appeals for the Eighth Circuit entered an order on November 29, 1982, denying Petitioner's request for a rehearing. A copy of that order is also attached in the Appendix to this brief.

JURISDICTION

The United States Court of Appeals' opinion reversing the District Court's dismissal was entered on November 12, 1982, and an order denying rehearing was entered on November 29, 1982. The United States Supreme Court is conferred jurisdiction on this matter pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

This Petition for Writ of Certiorari involves interpretation of 42 U.S.C. §2000(e)-(5)(f)(1) which in pertinent part states:

> ". . . if a charge filed with the Commission pursuant to Subsection (b) of this section is dismissed by the Commission, or if within 180 days from the filing of such charge . . . the Commission has not filed a civil action under the statute . . . or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, . . . shall so notify the person aggrieved and within 90 days after the giving of such notice a civil action may be brought against the respondent named in the charge by the person claiming to be aggrieved . . . ."

STATEMENT OF THE CASE

The complaint in this action was originally filed on October 23, 1981, and was filed pursuant to Title VII of the 1964 Civil Rights Act and 42 U.S.C. §1981. The basis for federal jurisdiction in the court of first instance was 28 U.S.C. §§ 1343, 2201 and 2202, and 42 U.S.C. §2000(e), et seq. The complaint alleged racial and sexual discrimination on the part of the Petitioner in its employment decisions affecting Eloise Thomas. The Petitioner filed a motion to dismiss the Title VII portions of the complaint as being untimely filed and filed an

answer to the portion of the complaint filed pursuant to 42 U.S.C. §1981. Petitioner filed its motion to dismiss based upon the fact that Ms. Thomas' attorney had received on July 16, 1981, a certified copy of his client's notice of right to sue letter from the EEOC. The lawsuit was not filed until October 23, 1981, which was 99 days after the Respondent's attorney had received a copy of the right to sue letter. A hearing was held in the District Court on the Petitioner's motion to dismiss to determine the factual issues as to whether or not P. A. Hollingsworth was, in fact, Ms. Thomas' attorney at the time he received the right to sue letter on July 16, 1981. The evidence revealed that Ms. Thomas filed her charge of discrimination based upon race and sex on June 27, 1980. In the summer of 1981, prior to July 10, 1981, Ms. Thomas was advised by Mr. Hollingsworth, who is a practicing attorney in Little Rock, Arkansas, that she had the right to request a right to sue letter from the EEOC since 180 days had elapsed since the filing of her charge. Subsequently, on July 10, 1981, Ms. Thomas went to the Equal Employment Opportunity Commission and requested her right to sue letter. Ms. Thomas informed an EEOC representative that Mr. Hollingsworth was her attorney and EEOC forms were prepared to so indicate. During the course of this meeting, the EEOC representative telephoned Mr. Hollingsworth. Mr. Hollingsworth confirmed to the EEOC representative that he represented Ms. Thomas and instructed the EEOC representative to send him Ms. Thomas' right to sue letter.

On July 14, 1981, the EEOC issued a notice of right to sue. The right to sue letters were sent by certified mail, return receipt requested. Return receipts indicate that Mr. Hollingsworth received his right to sue letter on behalf of Ms. Thomas on July 16, 1981, when his authorized agent, Vickie Walpole, received it and that Ms. Thomas received hers on July 27, 1981.

Not until October 23, 1981, was the lawsuit filed. The

District Court found by a preponderance of the evidence that the attorney-client relationship existed between Ms. Thomas and Mr. Hollingsworth as of July 10, 1981, when the right to sue letter was requested, and further found that the 90 day statutory period for filing a Title VII action after issuance of a right to sue letter began to run from the time that Mr. Hollingsworth received his copy of Ms. Thomas' right to sue letter. Consequently, the action was found to have been untimely filed since it was filed 99 days after Mr. Hollingsworth had received his copy of the right to sue letter and the Title VII portions of the complaint were dismissed.

ARGUMENT

1. The opinion of the Court of Appeals improperly held that the ninety day period in which to file an action in Federal Court pursuant to Title VII of the 1964 Civil Rights Act does not begin to run from the time the charging party's attorney received the notice of right to sue unless it can be shown that the charging party specifically directed the EEOC to send the right to sue letter to the charging party's attorney.

The opinion of the Eighth Circuit Court of Appeals is in conflict with the recognized legal principle that a party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged to his attorney. *Link v. Wabash Railroad Company*, 370 U.S. 629, 82 S.Ct. 1386, 8 L.Ed.2d 734, *rehearing denied* 371 U.S. 873, 83 S.Ct. 115, 9 L.Ed.2d 112. In order to hold that notice to Mr. Hollingsworth was not notice to his client. The Eighth Circuit Court of Appeals has effectively ruled that under Section 2000(e)-(5)(f)(1) no constructive notice is cognizable. The Court has effectively held that the receipt of a right to sue letter by an attorney representative of a charging party is not going to be attributable to the attorney's client unless it can be specifically proven that the attorney personally received the letter from the EEOC and the client, as

opposed to the attorney, has specifically directed the EEOC to send the right to sue letter to the attorney. The Eighth Circuit Court of Appeals' decision in this regard is in conflict with existing precedent in both the Ninth Circuit and the Seventh Circuit. The Ninth Circuit held in *Gonzales v. Standard Applied Engineering*, 597 F.2d 1298 (9th Cir. 1979), that when the request for issuance of a right to sue letter comes from a claimant's attorney, notice to the attorney that the right to sue has been granted starts the time running. In this case, the duly authorized legal representative of Ms. Thomas wanted the right to sue letter. *Gonzales* has not read into Title VII a requirement that a charging party must specifically direct the EEOC to send the right to sue to his or her attorney. Rather, the *Gonzales* opinion follows the common law rule expressed in *Link v. Wabash Railroad Company, supra*, namely, that a party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon his attorney.

The Seventh Circuit has reached a similar holding. In the case of *Minor v. Lakeview Hospital*, 421 F.Supp. 485, affirmed without opinion, 582 F.2d 1284 (7th Cir. 1978), the Seventh Circuit affirmed the lower court's ruling that notice to the attorney was notice to the client. In *Minor* the charging party had not even been sent a right to sue letter. The court held nevertheless he was time barred from filing his lawsuit under Title VII. Consequently, the requirement as stated by the Eighth Circuit Court of Appeals that there need be a specific finding that Ms. Thomas requested that the right to sue letter be sent to Mr. Hollingsworth is a requirement that no other circuit is imposing. Clearly, the Eighth Circuit's opinion in this case is, therefore, in conflict with established precedent in at least two other circuits. The Court's opinion is also in conflict with the case of *Mays v. Memphis Light Gas and Water Division*, 517 F.Supp. 232 (W.D. Tenn. 1981).

2. The opinion of the Court of Appeals improperly held that receipt by an attorney's employee of a charging party's right to sue letter did not trigger the running of the statutory ninety day filing period pursuant to Title VII of the 1964 Civil Rights Act.

The Eighth Circuit also held that receipt by Mr. Hollingsworth's employee of a copy of Respondent's right to sue letter did not trigger the running of the statutory ninety day filing period. The opinion requires that the attorney personally acknowledge receipt for the letter. The majority of a three judge panel in *Decker v. Anheuser Busch*, 632 F.2d 1221 (5th Cir. 1980), held that delivery of a right to sue letter to the office of the attorney representing an aggrieved party triggered the running of the statutory ninety day filing period of 42 U.S.C. §2000(e)-(5)(f)(1). The Fifth Circuit granted a rehearing *en banc* in *Decker*, and vacated the panel decision and remanded the case for a further evidentiary hearing as to the scope and duration of the alleged attorney-client relationship. *Decker v. Anheuser Busch*, 670 F.2d 506 (5th Cir. 1982) *(banc)*. However, the majority panel in that case held that notice is effective from the time of its delivery to the attorney's office, without regard to when the attorney may have actually read the communication. *Decker*, 632 F.2d at 1224. Consequently, the Eighth Circuit's holding that the attorney must personally acknowledge receipt of the right to sue is in conflict with that part of the Fifth Circuit's opinion above cited.

Mr. Hollingsworth personally saw the charging party's right to sue letter on July 20, 1981. On that date he wrote to the charging party to inform her that he had received her right to sue letter. Although it is true that Mr. Hollingsworth did not personally sign the return receipt for the right to sue letter sent to his office, he was personally aware ninety-five days before the lawsuit was filed of the existence of the right to sue letter and the fact that it was in his office. Even if the

Eighth Circuit Court of Appeals did not want to rely upon Mr. Hollingsworth's employee's signature for the right to sue letter, it is reasonable for Mr. Hollingsworth to be considered on notice of the right to sue letter by July 20, 1981, when he personally acknowledged to his own client that he was aware of the issuance of the right to sue letter.

CONCLUSION

Petitioner respectfully urges this Court to grant its petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

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APPENDIX

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN. 26, 1982
CARL R. BRENTS, CLERK
By: Freeman
DEPT. CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ELOISE THOMAS — PLAINTIFF
VS. — NO. LR C 81 740
KATV — DEFENDANT

ORDER

On January 25, 1982, the Court conducted a hearing on the defendant's motion to dismiss the Title VII portion of the complaint. The Court's decision on that motion turns on a determination whether an attorney-client relationship had been established between the plaintiff and her present attorney, P. A. Hollingsworth, on July 10, 1981. This factual issue is determinative of the issue because of the rule that receipt of an EEOC right to sue letter by a charging party's attorney begins the ninety day period within which suit may be filed under Title VII. *Decker v. Anheuser-Busch*, 632 F.2d 1221 (5th Cir. 1980). In this case suit was filed October 23, 1981, and Attorney Hollingsworth's office received the right to sue letter on July 16, 1981, ninety-nine days earlier.

The testimony of both the plaintiff and Mr. Hollingsworth was that, while they had discussed her case on July 10, they did not consider themselves bound as attorney and client

at that point. While this testimony is certainly entitled to some weight, and while the Court is not unmindful of the broad remedial purposes of Title VII, see *Craig v. H.E.W.*, 581 F.2d 189 (8th Cir. 1978), the preponderance of the evidence is simply to the contrary. In requesting her right to sue letter from the EEOC, the plaintiff designated Mr. Hollingsworth as her attorney on EEOC forms. The plaintiff states that she was considering discharging her former attorney, Mr. John Walker, and intended to retain Mr. Hollingsworth at that point, but that she had not yet done so. Yet Px 3, a letter from Ms. Thomas to Mr. Walker dated July 10, clearly indicates that Mr. Walker is discharged and states, "I have retained a new attorney." Moreover, Px 4, Ms. Thomas' letter of July 17, to Mr. Hollingsworth, confirms this. Finally, Ms. London of the EEOC testified, based on her log of phone conversations kept in the course of the case, that she talked with Mr. Hollingsworth on July 10, and that he indicated he was "representing" Ms. Thomas. Thus the Court can only conclude that Mr. Hollingsworth was, in fact, representing Ms. Thomas on July 10, 1981.

The motion to dismiss the Title VII portion of the complaint is granted. The case will proceed to trial as presently scheduled as a claim under 42 U.S.C. §1981.

It is so ordered this January 26, 1982.

William R. Overton
UNITED STATES DISTRICT JUDGE

26 JAN 1982

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 82-1265

Eloise Thomas,
Appellant,
vs.
KATV Channel 7,
Appellee.

Appeal from the United States District Court for the Eastern District of Arkansas

Submitted: October 14, 1982

Filed: November 12, 1982

Before McMILLIAN, Circuit Judge, FLOYD R. GIBSON, Senior Circuit Judge, and JOHN R. GIBSON, Circuit Judge.

PER CURIAM.

Appellant Eloise Thomas appeals from a final judgment entered in the District Court for the Eastern District of Arkansas dismissing her claims of race and sex discrimination brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*[1] The district court found that appellant's complaint was not filed within the ninety-day filing period provided by 42 U.S.C. § 2000e-5(f)(1). For the reasons discussed below, we reverse.

[1]Thomas appealed after her Title VII claim was dismissed, but while a 42 U.S.C. § 1981 claim was still pending. However, on March 9, 1982, a non-suit was ordered on the § 1981 claim.

On June 27, 1980, appellant filed charges of race and sex discrimination with the Equal Employment Opportunity Commission (EEOC) against her employer, appellee KATV. On July 10, 1981, appellant made a written request for a right to sue letter. On that day an EEOC log entry made by Vernell London, an EEOC supervisor, notes that appellant reported a change of address and "wanted the records to show P. Hollingsworth as atty. [attorney] to rep. [represent] her." The log entry also notes, and London testified, that London telephoned Hollingsworth to verify his representation of appellant. According to London, Hollingsworth confirmed his representation and requested that a copy of appellant's right to sue letter be sent to him. Hollingsworth denied confirming his representation or requesting a copy of the right to sue letter.

On July 14, 1981, the EEOC sent appellant a right to sue letter. The letter was addressed to appellant at her correct address and was sent by certified mail, return receipt requested. A copy of the letter was also sent to Hollingsworth. On July 16, an employee of Hollingsworth signed a certified mail receipt for the letter. Hollingsworth testified that he did not actually see the copy of appellant's right to sue letter until July 20. On that day Hollingsworth wrote to appellant to inform her that he received a copy of her right to sue letter and that she would have to file suit within ninety days of her receipt of this letter. Appellant did not receive the right to sue letter until July 27.

Hollingsworth filed appellant's complaint on October 23, 1981, eighty-eight days after appellant received her right to sue letter. KATV moved to dismiss, alleging that the complaint was untimely because it was filed ninety-nine days after Hollingsworth's receipt of the copy of appellant's right to sue letter. KATV argued that Hollingsworth was appel-

lant's counsel and that notice to counsel constitutes notice to appellant. After a hearing on appellee's motion to dismiss, the district court found an attorney-client relationship existed and dismissed the case, relying on *Decker v. Anheuser-Busch*, 632 F.2d 1221 (5th Cir. 1980). In *Decker*, a divided panel of the Fifth Circuit held that delivery of a right to sue letter to the office of the attorney representing an aggrieved party triggered the running of the statutory ninety-day filing period of 42 U.S.C. § 2000e-5(f)(1). The section provides that within ninety days after the EEOC provides notice to "the person aggrieved" suit may be filed in federal district court.[2] Subsequent to the district court's dismissal of appellant's complaint, the Fifth Circuit granted rehearing en banc in *Decker*, vacated the panel decision and remanded the case for a further evidentiary hearing as to the scope and duration of the alleged attorney-client relationship. 670 F.2d 506 (5th Cir. 1982) (banc).

Appellee KATV asks this court to adopt the holding of the majority of the panel in *Decker*. We decline to do so. In *Craig v. Department of HEW*, 581 F.2d 189 (8th Cir. 1978), this court rejected the argument that receipt of notice of a right to sue letter by an employee of the attorney of an aggrieved federal employee constituted receipt of notice by

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[2]The statute provides in pertinent part:

> If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge . . . the Commission has not filed a civil action under this section . . ., the Commission . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge . . .

42 U.S.C. § 2000e-5(f)(1). *See also* 29 C.F.R. §1601.28 (1980).

Appellee's motion to dismiss alleged the district court lacked jurisdiction because of appellant's failure to file her complaint within the ninety-

the aggrieved party as contemplated by the relevant statutory provision.[3] The court stated:

> We have heretofore recognized "that Title VII is remedial in character and should be liberally construed to achieve its purposes"; "for this reason," we have observed, "courts confronted with procedural ambiguities in the statutory framework have, with virtual unanimity, resolved them in favor of the complaining party." "That approach," we have added, "reflects not only the manifest importance of Title VII rights to complaining parties, but also the broad national commitment to eliminating such discrimination and the importance of private suits in fulfilling that commitment."

Id. at 192, *quoting Bell v. Brown*, 557 F.2d 849, 853 (D.C. Cir. 1977) (footnotes omitted). Although *Craig* involves the provision of Title VII pertaining to federal employees, the above-

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day statutory filing period of § 2000e-5(f)(1). At oral argument, appellee conceded that in light of the recent Supreme Court case of *Zipes v. Trans World Airlines, Inc.*, 102 S. Ct. 1127 (1982), the statutory filing period of § 2000e-5(f)(1) was more akin to a statute of limitations than a jurisdictional prerequisite. In *Zipes*, the Court held that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in a federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." 102 S. Ct. at 1132. Recent circuit courts cases have extended the rationale of *Zipes* to the ninety-day filing period of § 2000e-5(f)(1). *E.g. Pinkard v. Pullman-Standard*, 678 F.2d 1211, 1215-16 (5th Cir. 1982); *Gordon v. National Youth Work Alliance*, 675 F.2d 356, 360 (D.C. Cir. 1982).

[3]The statute provides that "within thirty days of receipt of notice" an aggrieved federal employee may file suit. 42 U.S.C. § 2000e-16.

At the time of the *Craig* decision, the Civil Service Commission was vested with certain enforcement functions in discrimination suits by federal employees. Subsequent to *Craig*, the EEOC assumed the enforcement functions of federal employee discrimination claims pursuant to § 3 of the Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19,807 (1978) (effective Jan. 1, 1979). Exec. Order No. 12,106, 44 Fed. Reg. 1053 (1978).

quoted language is clearly applicable to Title VII suits by private employees as well.[4] We agree with the dissent in the *Decker* panel opinion which recognized that the *Craig* rationale is applicable to cases brought under § 2000e-5(f)(1). *Decker*, 632 F.2d at 1225 (Rubin, J., dissenting). "[T]he shared remedial purpose compels the same interpreation." *Id.*

The court in *Craig*, however, indicated that notice to a designated representative of an aggrieved party could satisfy statutory requirements if the notice was "addressed in accordance with the specific directions of the employee, *and* receipt [was] acknowledged personally by the designated representative." (emphasis added).[5] 581 F.2d at 193. As in *Craig*, these requirements have not been met. There is no evidence that appellant requested that the right to sue letter be sent to Hollingsworth or that he personally acknowledged receipt. Therefore, receipt by Hollingsworth's employee of a copy of appellant's right to sue letter did not trigger the running of the statutory ninety-day filing period.

This court grants appellant reasonable attorney's fees for this appeal, pursuant to 8th Cir. R.17, to which the parties' attention is directed.

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[4]As additional support for the holding in *Craig*, we noted that Civil Service regulations required direct notice to an aggrieved federal employee. 581 F.2d at 192-93.

[5]The Ninth Circuit has held that "when the request for issuance of a right to sue letter comes form a claimant's attorney, notice to the attorney that right to sue has been granted starts the time running." *Gonzalez v. Stanford Applied Eng'g, Inc.*, 597 F.2d 1298, 1299 (9th Cir. 1979) (per curiam). In the instant case, the evidence is that appellant, not Hollingsworth, requested issuance of the right to sue letter; at most, all Hollingsworth requested was a copy of appellant's right to sue letter. We express no opinion as to the validity of the *Gonzalez* holding.

Accordingly, this case is reversed and remanded for further proceedings.[6]

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

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[6]The disposition of this case makes it unnecessary for this court to decide whether the district court erred in finding that an attorney-client relationship existed between Hollingsworth and appellant.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 81-1265 September Term 1982

Eloise Thomas,
Appellant,
vs.

KATV Channel 7,
Appellee.

Appeal from the United States District Court for the Eastern District of Arkansas

Petition of appellee for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

November 29, 1982

No. 82-1224

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

KATV - CHANNEL 7,
Petitioner,

vs.

ELOISE THOMAS,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals improperly held that the ninety day period in which to file an action in Federal Court pursuant to Title VII of the 1964 Civil Rights Act does not begin to run from the time the charging party's attorney received the notice of right to sue unless it can be shown that the charging party specifically directed the EEOC to send the right to sue letter to the charging party's attorney?

2. Whether the Court of Appeals improperly held that receipt by an attorney's employee of a charging party's right to sue letter did not trigger the running of the statutory ninety day filing period pursuant to Title VII of the 1964 Civil Rights Act?

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OCTOBER TERM, 1982

KATV - CHANNEL 7,
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ELOISE THOMAS,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case presents questions concerning the proper application of the ninety-day filing period provided by 42 U.S.C. § 2000e-5(f)(1).

On June 27, 1980, respondent filed charges of race and sex discrimination with the Equal Employment Opportunity Commission (EEOC) against her employer, petitioner, KATV. On July 10, 1981, respondent made a written request for a right to sue letter. Moreover, while the testimony below was contradictory on this point, an EEOC supervisor testified that the respondent also indicated on this date that Mr. P.A. Hollingsworth

would be her representative. The EEOC Supervisor also testified that she confirmed Hollingsworth's representation of respondent by phone and that Mr. Hollingsworth requested that a copy of the right to sue letter be sent to him.[1]

On July 14, 1981, the EEOC sent respondent a right to sue letter by certified mail, return receipt requested. A copy of the letter was also sent to Hollingsworth. On July 16, an employee of Mr. Hollingsworth signed a certified mail receipt for the letter, though Mr. Hollingsworth did not see the copy of respondent's right to sue letter until July 20, 1981. The respondent did not receive the right to sue letter until July 27.

Respondent's complaint was filed on October 23, 1981, eighty-eight days after she received her right to sue letter. Petitioner, KATV, moved to dismiss alleging that the complaint was untimely because it was filed ninety-nine days after *Hollingsworth* received a copy of respondent's right to sue letter.

Following a hearing on petitioner's motion the district court, relying on *Decker* v. *Anheuser Busch,* 632 F.2d 1221 (5th Cir. 1980)[2] found that an attorney-client relationship existed and dismissed the case. The Eighth Circuit reversed, holding there was "no evidence that appellant [respondent] requested that the right to sue letter be sent to Hollingsworth or that he personally acknowledged receipt." (Pet. App.)

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[1] The Court of Appeals opinion observes that Mr. Hollingsworth denied confirming his representation or requesting a copy of the right to sue letter. (See *Thomas* v. *KATV, Channel 7,* No. 82-1265 Slip Opinion, 2) (Petitioner's Appendix, hereinafter Pet. App.)

[2] The Fifth Circuit subsequently granted rehearing en banc in *Decker,* vacated the panel decision and remanded the case for a further evidentiary hearing as to the scope and duration of the alleged attorney-clerk relationship. 670 F.2d 506 (5th Cir. 1982) (banc).

ARGUMENT: REASONS FOR DENYING THE WRIT

I.

The Decision Of The Eighth Circuit Is Consistent With Supreme Court Decisions And There Is No Conflict Among The Circuits.

While this Court has not specifically addressed the question of the proper application of the ninety-day filing period of 42 U.S.C. § 2000e-5(f)(1) those Courts of Appeals which have considered the issue have uniformly addressed their inquiry to questions concerning the scope and extent of the attorney-client relationship between the Title VII claimant and his/her attorney and the authorization, if any, for the attorney to receive and open mail on the claimant's behalf. *Decker* v. *Anheuser-Busch,* 670 F.2d 506, 507 (5th Cir. 1982) (en banc).[1]

As such, the decision of the Court of Appeals below, is perfectly consistent with the decisions of the Ninth and Seventh Circuits which have also considered this issue. In *Gonzalez* v. *Stanford Applied Engineering,* 597 F.2d 1298, 1299 (9th Cir. 1979), the Ninth Circuit held that,

> [w]hen the request for issuance of a right to sue letter comes from a claimant's attorney, notice to the attorney that right to sue has been granted starts the time running.

In *Minor* v. *Lakeview Hospital,* 421 F. Supp. 485, 486 affirmed without opinion, 582 F.2d 1284 (7th Cir. 1978) the Seventh Circuit adopted essentially the same view. There, the attorney sent notice to the EEOC that he had been retained and requested that "all future correspondence" to his client be served directly upon him, and he specifically requested that the commission issue a notice of right to sue.

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[1] *See, e.g. Jones* v. *Golden Gate Equipment Company,* ____ F. Supp. ____, 25 EPD ¶ 31,574, 24 FEP Cases 1252 (N.D. Cal. 1980).

The legal underpinning for all these cases is that unless there is some clear indication that the claimant desires that the attorney receive the right to sue notification, the statute ought to operate literally, and the 90-day limitation ought not to begin running until the notice is received by the claimant. In both *Gonzalez* and *Minor* the attorney-client relationship was one of long standing before the Commission, and indeed in those cases, the attorneys themselves made the request for the right to sue letter.

The Eighth Circuit rule, is plainly geared to provide similar protection for those the statute is designed to protect. The Eighth Circuit's opinion, relying on *Craig* v. *Department of HEW*, 581 F.2d 189 (8th Cir. 1978), seeks to protect the claimant and ensure that there is a legitimate attorney-client relationship before the attorney is authorized to receive the notice of right to sue. In effect then, the Eighth Circuit rule operates in the same fashion as the rules from the Seventh and Ninth Circuit in that they are all protective of the claimant and require a substantial attorney-client relationship before the institution of the lawsuit is taken from the hands of the claimant.

II.

The Eighth Circuit's Decision Is Correct

The facts of this case do not demonstrate such an attorney-client relationship as would have withstood the test of *Gonzalez, Minor* or *Decker*. Here the claimant (respondent) specifically requested that the notification of right to sue be sent to her. And while there is disputed testimony as to whether or not Hollingsworth requested a *copy* of the right to sue,[4] unlike

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[4] It is noteworthy that Hollingsworth is claimed to have made this request by phone pursuant to a contact initiated by the EEOC. However, the EEOC regulations require that the request for a notice of right to sue be made in writing. 29 C.F.R. § 1601.28 and the claimant Ms. Thomas made such a written request that the notice be sent to her.

the situations in *Gonzalez* and *Minor,* Hollingsworth did not initiate the request for the right to sue, had no prior dealings with the EEOC involving the respondent prior to her request for the right to sue, and made no request that he rather than respondent receive communications from the EEOC.

Contrary to the assertions of the petitioner, the Eighth Circuit's opinion does not sound the death knell for constructive notice under 42 U.S.C. § 2000(e)-5(f)(1). Rather, in harmony with the decisions of the Fifth, Seventh and Ninth Circuits, the Eighth Circuit has merely more precisely defined the circumstances under which such constructive notice may more properly attach. Recognizing Title VII as a remedial statute each of the circuits has attempted to resolve ambiguities in the statute such as these, "in favor of those whom the legislation was designed to protect." *Craig,* 581 F.2d at 192.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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